

# **The National Labor Relations Board (NLRB) and the Right of Northwestern University Football Players to Unionize: Background and Related Issues**

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## Summary

In late January 2014, a group of students who play football for Northwestern University filed a representation petition with the National Labor Relations Board (NLRB). The students are seeking to be represented by the College Athletes Players Association (CAPA), a newly created labor organization. CAPA contends that college football and basketball players, particularly those who compete in Division I of the National Collegiate Athletic Association (NCAA), are essentially employees given the amount of time they commit to athletics, the revenue they generate for their schools, and their receipt of compensation in the form of scholarships. If the Northwestern players are found to be employees for purposes of the National Labor Relations Act (NLRA), they will be permitted to engage in collective bargaining over the terms and conditions of their employment.

This report provides an overview of the NLRA, and reviews the March 2014 decision by the NLRB's regional director, which concluded that the Northwestern players are employees under the act. The report examines the concerns raised by both the university and CAPA. The report also discusses other developments that could affect unionization efforts by athletes at private colleges and universities. In August 2014, the NCAA Division I Board of Directors gave new authority to five conferences—consisting of 65 public and private colleges and universities—to provide greater financial support to student-athletes. Also, an August 2014 U.S. District Court decision will allow NCAA Division I Football Bowl Subdivision (FBS) and basketball schools to use revenue from the use of players' names, images, or likenesses to provide greater financial support to athletes.

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In March 2014, a regional director of the National Labor Relations Board (NLRB or Board) ruled that scholarship football players at Northwestern University are employees for purposes of the National Labor Relations Act (NLRA), and ordered an election to determine support for the College Athletes Players Association (CAPA), a newly created labor organization.<sup>1</sup> Although the full five-member NLRB agreed to review the regional director's decision, an election was held on April 25, 2014, with the ballots impounded until after a final decision is issued in the case.<sup>2</sup> If the decision is upheld and a majority of players have voted to be represented by CAPA, the players are expected to negotiate with the university over various terms and conditions of employment.

This report provides an overview of the NLRA, and reviews the decision by the NLRB's regional director. The report also examines the concerns raised by Northwestern and CAPA. The report ends with a brief discussion of other developments that could affect unionization efforts by athletes at private colleges and universities.

## The National Labor Relations Act (NLRA)

The NLRA, as amended, establishes the basic framework governing labor-management relations in the private sector.<sup>3</sup> The act provides workers the right to join or form a labor union and to bargain collectively over wages, hours, and other conditions of employment. Under the act, workers also have the right to not join a union. The act requires an employer to bargain in good faith with a union chosen by a majority of employees. To protect the rights of employers and workers, the act identifies certain activities as unfair labor practices.<sup>4</sup>

The NLRA covers most, but not all, private sector workers in the United States. It does not cover agricultural workers, family domestic workers, supervisors, or independent contractors. The act does not apply to railroad or airline employees, who are covered by the Railway Labor Act (RLA).<sup>5</sup> The NLRA does not cover federal, state, or local government employees. Most federal employees are covered by the Federal Service Labor-Management Relations Statute (FSLMRS).<sup>6</sup> Employees of state and local governments, including employees of public colleges and universities, are covered by state or local laws. In a majority of states, public employees have the right to engage in some form of collective bargaining. This right may be limited, however, to only some employees (e.g., to public safety workers).<sup>7</sup>

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<sup>1</sup> Northwestern Univ., Case 13-RC-121359, 2014 WL 1246914 (N.L.R.B.) (Mar. 26, 2014).

<sup>2</sup> *NLRB Will Consider Northwestern Decision*, 79 Daily Lab. Rep. (BNA) A-1 (Apr. 24, 2014).

<sup>3</sup> 29 U.S.C. §§ 151 *et seq.* For more information on the NLRA, see CRS Report RL32930, *The National Labor Relations Act (NLRA): Union Representation Procedures and Dispute Resolution*, by Gerald Mayer.

<sup>4</sup> See 29 U.S.C. § 158.

<sup>5</sup> 45 U.S.C. §§ 151 *et seq.*

<sup>6</sup> 5 U.S.C. § 7101 *et seq.* For detailed information on federal labor relations laws, see CRS Report R42526, *Federal Labor Relations Statutes: An Overview*, by Gerald Mayer, Jon O. Shimabukuro, and Benjamin Collins.

<sup>7</sup> For a discussion of labor-management relations in the public sector, see CRS Report R41732, *Collective Bargaining and Employees in the Public Sector*, by Jon O. Shimabukuro. For summaries of state collective bargaining laws, see Bloomberg BNA, *Public Sector Bargaining—State Laws*, Labor and Employment Law Resource Center, available at [http://laborandemploymentlaw.bna.com/lerc/2445/split\\_display.adp?fedfid=1480271&vname=lecblaw&fcn=1&wsn=501128000&fn=1480271&split=0](http://laborandemploymentlaw.bna.com/lerc/2445/split_display.adp?fedfid=1480271&vname=lecblaw&fcn=1&wsn=501128000&fn=1480271&split=0).

## The National Labor Relations Board

The NLRA is administered and enforced by the NLRB, an independent federal agency that consists of a five-member Board and a General Counsel.<sup>8</sup> The Board resolves objections and challenges to secret ballot elections, decides questions about the composition of bargaining units, and hears appeals of unfair labor practices.<sup>9</sup> The General Counsel's office conducts secret ballot elections, investigates complaints of unfair labor practices, issues unfair labor practice charges, and supervises the NLRB's regional and other field offices.<sup>10</sup>

The Board and General Counsel are appointed by the President and confirmed by the Senate. Traditionally, the Board is comprised of two Democrats, two Republicans, and a fifth member who belongs to the same party as the President.

## Union Representation

The NLRA states that a union may be “designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes....”<sup>11</sup> A union that is selected by a majority of employees in an election conducted by the NLRB is *certified* as the bargaining representative of employees in the bargaining unit. An employer may also voluntarily *recognize* a union if a majority of employees in a bargaining unit have signed authorization cards.

The NLRB conducts a secret ballot election when a petition is filed requesting one. A petition can be filed by a union, worker, or employer. Workers or a union may request an election if at least 30% of workers have signed authorization cards (i.e., cards authorizing a union to represent them).

After a petition is filed with the NLRB requesting an election, the employer and union may agree on the time and place for the election and on the composition of the bargaining unit. If an agreement is not reached between the employer and union, a hearing may be held in the relevant regional office of the NLRB. The regional director may then direct the holding of an election. Under specified circumstances, the regional director's decision may be appealed to the full Board.<sup>12</sup>

A union is certified by the NLRB as the exclusive bargaining representative of the employees if a majority of employees who vote (i.e., not a majority of employees in the bargaining unit) choose to be represented by a union.<sup>13</sup> Under the so-called “election bar,” if the NLRB conducts an election and a majority of employees do not choose to be represented by a union, another representation election cannot be held for at least 12 months.<sup>14</sup>

The NLRB also conducts elections to decertify a union that has previously been certified or recognized. A decertification petition may be filed by employees or a union acting on behalf of

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<sup>8</sup> See 29 U.S.C. § 153.

<sup>9</sup> Bruce S. Feldacker, *Labor Guide to Labor Law* 8-10 (2000).

<sup>10</sup> Nat'l. Lab. Rel. Board, *Basic Guide to the National Labor Relations Act*, at 33 (1997), available at <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf>.

<sup>11</sup> 29 U.S.C. § 159(a).

<sup>12</sup> 29 C.F.R. § 102.67.

<sup>13</sup> *Basic Guide to the National Labor Relations Act*, *supra* note 10 at 16.

<sup>14</sup> *Id.* at 15.

employees.<sup>15</sup> A decertification petition must be signed by at least 30% of the employees in the bargaining unit represented by the union. Under the so-called “certification bar,” a union that is certified after winning a secret ballot election is protected for a year from a decertification petition and from an election petition filed by another union. A secret ballot election is required for decertification.

## **Good Faith Bargaining**

If a union wins an NLRB election, the employer is required to bargain in good faith for a year.<sup>16</sup> The NLRA does not require the parties to reach an agreement on a contract. After one year, if an employer and a certified union have not reached a contract agreement, the employer may withdraw recognition of the union if both parties have engaged in good faith bargaining and the employer doubts, on the basis of objective information (e.g., a petition signed by a majority of employees and given to the employer), that a majority of employees continue to support the union. If a union has been voluntarily recognized by an employer and no agreement has been reached after a reasonable period of time, an employer may withdraw recognition if the employer doubts, on the basis of objective information, that a majority of employees support the union.<sup>17</sup>

## **Bargaining Subjects**

The NLRB and courts have divided bargaining subjects into three categories: mandatory, permissive, and illegal subjects.<sup>18</sup>

### **Mandatory Subjects**

Mandatory subjects of bargaining include “wages, hours, and other terms and conditions of employment.”<sup>19</sup> At the request of either the employer or union, both parties must bargain over mandatory subjects. Both the employer and the union must bargain in good faith with respect to wages, hours, and other working conditions.

“Wages” include basic pay, overtime pay, merit pay increases, bonuses that are compensation for services provided, profit-sharing plans, and paid vacations and holidays.<sup>20</sup> Mandatory bargaining subjects also include certain benefits, such as group health insurance and pension benefits for current employees.<sup>21</sup>

The term “hours” has been interpreted to include daily and weekly work schedules.<sup>22</sup>

“Other conditions of employment” include changes in work assignments, procedures for layoffs and recalls, rules to discipline or discharge employees, policies for promotions and seniority, grievance procedures and arbitration, and no-strike or no-lockout clauses.<sup>23</sup> An employer code of

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<sup>15</sup> *Id.* at 14.

<sup>16</sup> Feldacker, *supra* note 9 at 191.

<sup>17</sup> *Id.* at 193.

<sup>18</sup> *Id.* at 208.

<sup>19</sup> 29 U.S.C. § 158(d).

<sup>20</sup> John E. Higgins, Jr., *The Developing Labor Law* 1342-43 (2012).

<sup>21</sup> *Id.* at 1347-59.

<sup>22</sup> *Id.* at 1374-75.

<sup>23</sup> *Id.* at 1378-80.

ethics is a mandatory subject of bargaining if a violation of the code subjects an employee to discipline. Drug or alcohol testing of current employees is also a mandatory subject of bargaining.

### **Permissive Subjects**

Permissive subjects of bargaining are those that either party may propose to be included in a collective bargaining agreement. One party may request bargaining on a permissive subject, but the other party is not required to bargain.<sup>24</sup> Permissive subjects include the definition of a bargaining unit, the selection of bargaining representatives, and the parties involved in collective bargaining.<sup>25</sup> Pre-employment drug or alcohol testing of job applicants is a permissive subject.<sup>26</sup>

### **Illegal Subjects**

An employer and union cannot bargain over illegal subjects. If the parties should reach an agreement on an illegal subject, the agreement is not enforceable. Examples of illegal subjects of bargaining include clauses that would treat employees differently because of race or gender, a provision giving preferences to union members in hiring, or a clause that would allow an employer to discharge an employee for union activity.<sup>27</sup>

### **Unfair Labor Practices**

The NLRA identifies certain activities as unfair labor practices that are prohibited.<sup>28</sup> For example, employers have the right to campaign against unionization, but they cannot interfere with, restrain, or coerce employees in their right to form or join a union. An employer cannot threaten employees with the loss of their jobs or benefits if they vote for a union or join a union. An employer cannot threaten to close a plant should employees choose to be represented by a union. An employer cannot raise wages to discourage workers from joining or forming a union. An employer cannot discriminate against employees with respect to their conditions of employment (e.g., fire, demote, or give unfavorable work assignments) because of union activities.

Employees have the right to organize and bargain collectively. However, a union cannot restrain or coerce employees to join or not join a union. A union cannot threaten employees with the loss of their jobs if they do not support unionization. A union cannot cause an employer to discriminate against employees with respect to their conditions of employment. A union is also prohibited from boycotting or striking an employer that is a customer of or supplier to an employer that the union is trying to organize.<sup>29</sup>

An unfair labor practice charge may be filed by an employee, employer, labor union, or any other person. After a charge is filed, a regional office of the NLRB investigates to determine whether there is reason to believe that the law has been violated. If no violation is found, the charge is dismissed or withdrawn. If a charge has merit, the regional director first seeks a voluntary

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<sup>24</sup> Feldacker, *supra* note 9 at 208.

<sup>25</sup> Other parties to collective bargaining may include an international union when a local union has been certified as the bargaining representative or an employer association when an employer is the bargaining representative. *See* Higgins, *supra* note 20 at 1450-60.

<sup>26</sup> Feldacker, *supra* note 9 at 210.

<sup>27</sup> Higgins, *supra* note 20 at 1481-85. *See also* Feldacker, *supra* note 9 at 209.

<sup>28</sup> 29 U.S.C. § 160.

<sup>29</sup> 29 U.S.C. § 158(b)(4).

settlement. If this effort fails, the case is heard by an NLRB administrative law judge. Decisions by administrative law judges can be appealed to the Board.<sup>30</sup>

## **Dispute Resolution**

When a union and employer cannot reach an agreement on a collective bargaining agreement, the dispute is called an impasse.<sup>31</sup> An impasse may lead to a strike by workers or a lockout of employees by the employer.<sup>32</sup> Instead of resorting to a strike or lockout, a union and employer may use a neutral third party to help them reach a contract agreement, whether the agreement is on an initial contract or a successor contract.

The consequences of a bargaining impasse depend on the type of bargaining subject at issue. If an employer and union cannot reach an agreement over a mandatory bargaining subject, the union may strike or the employer may lock out employees. A union cannot strike and an employer cannot lock out employees if the parties cannot agree on a permissive bargaining subject.<sup>33</sup>

Neither an employer nor a union can make a change in a mandatory subject without the consent of the other party. Instead, the employer or union must first notify the other party of the proposed change. Both parties must then bargain over the change. If an agreement cannot be reached, the parties may go to impasse.

If the parties reach an agreement on a permissive subject and include it in the collective bargaining agreement, the agreement is binding on both parties. Once a contract has expired, either party may make a unilateral change in an agreement on a permissive subject, without notifying the other party.<sup>34</sup>

## **Enforcement and Remedies Under the NLRA**

The purpose of the NLRA is not to punish employers, unions, or individuals, but to remedy violations of the law. The Board can issue orders in representation cases and unfair labor practice cases, but it does not have the authority to compel compliance with such orders. If an employer or union does not comply with an order, the Board can seek enforcement by a U.S. court of appeals.<sup>35</sup>

Judicial review of Board decisions in representation cases is generally limited.<sup>36</sup> In unfair labor practice cases, however, a Board decision can be appealed to a U.S. court of appeals, with review by the U.S. Supreme Court available.<sup>37</sup> A U.S. appeals court could potentially review a Board

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<sup>30</sup> See *Basic Guide to the National Labor Relations Act*, *supra* note 10 at 36. See also Nat'l Lab. Rel. Board, *Annual Report of the National Labor Relations Board, for the Fiscal Year Ended September 30, 2009*, at 4 (2010), available at <http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1677/nlr2009.pdf>.

<sup>31</sup> See John A. Fossum, *Labor Relations: Development, Structure, and Process* 377 (2002).

<sup>32</sup> In a lockout, an employer closes the workplace to employees involved in a labor dispute. The workers are not allowed to work and are not paid. See Daniel Quinn Mills, *Labor-Management Relations* 436 (1994).

<sup>33</sup> See Higgins, *supra* note 20 at 1449.

<sup>34</sup> *Id.* at 1448-49.

<sup>35</sup> 29 U.S.C. § 160(e).

<sup>36</sup> *But see* *Leedom v. Kyne*, 358 U.S. 184 (1958) (finding that a U.S. district court had jurisdiction to consider NLRB certification because the agency exceeded its authority under the NLRA).

<sup>37</sup> 29 U.S.C. § 160(f).



decision in a representation case if an employer refuses to bargain with a union and challenges the union's certification in an unfair labor practice case brought against the employer.<sup>38</sup>

Only final orders of the Board may be subject to judicial review. Thus, a decision by the NLRB's General Counsel to not issue an unfair labor practice complaint may not be reviewed.<sup>39</sup>

If the Board finds that an unfair labor practice has been committed, it can order the party to cease and desist from the unfair labor practice.<sup>40</sup> The Board can also order the reinstatement of fired employees, with or without back pay.<sup>41</sup>

Finally, the President may take emergency action if a strike or lockout that affects an industry, or a substantial part of it, could endanger national health or safety.<sup>42</sup>

## **NLRB and *Northwestern University***

In late January 2014, a group of students who play football for Northwestern University filed a representation petition with the NLRB. The students are seeking to be represented by CAPA, which contends that college football and basketball players, particularly those who compete in Division I of the National Collegiate Athletic Association (NCAA), are essentially employees given the amount of time they commit to athletics, the revenue they generate for their schools, and their receipt of compensation in the form of scholarships. It has been reported that the organizing effort is supported by a majority of Northwestern's football players.<sup>43</sup> The NCAA has maintained, however, that the players are "student-athletes" and not employees, and that their participation in college sports is voluntary.

Whether the Northwestern players may be considered employees for purposes of the NLRA is a threshold question that will likely determine their collective bargaining rights. In general, the NLRB has been guided by common law principles to evaluate an individual's employment status. The Board has considered, for example, the degree of control exercised by an employer over an alleged employee. The NLRB has also examined the economic realities of a situation, that is, the degree to which an alleged employee is dependent on an employer.

In 2004, the Board also considered congressional intent to determine whether graduate student assistants should be considered employees for purposes of the NLRA. In *Brown University*, the Board noted that "[t]he issue of employee status under the Act turns on whether Congress intended to cover the individual in question. The issue is not to be decided purely on the basis of older common law concepts."<sup>44</sup> Ultimately, the NLRB concluded that "it simply does not effectuate the national labor policy" to recognize collective bargaining rights for graduate student assistants because they are primarily students.<sup>45</sup>

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<sup>38</sup> See Higgins, *supra* note 20 at 3025.

<sup>39</sup> *Id.* at 2992.

<sup>40</sup> 29 U.S.C. § 160(c).

<sup>41</sup> *Id.*

<sup>42</sup> 29 U.S.C. § 176.

<sup>43</sup> See Ben Strauss, *In a First, Northwestern Players Seek Unionization*, N.Y. Times, Jan. 29, 2014, at B10.

<sup>44</sup> *Brown Univ.*, 342, NLRB 483, 491 (2004).

<sup>45</sup> *Id.* at 492.

Northwestern cited the NLRB's decision in *Brown University* to support its position that the football players are not employees.<sup>46</sup> On March 26, 2014, however, the regional director of the NLRB's Region 13 in Chicago concluded that the players are employees for purposes of the NLRA.<sup>47</sup> Citing the common law definition for the term employee, the regional director maintained that an individual is an employee if he "performs services for another under a contract for hire, subject to the other's control or right of control, and in return for payment."<sup>48</sup>

After reviewing how the Northwestern players were recruited and treated by the school and its coaches, the regional director found that the players met the common law definition. In this case, the "tender" that must be signed by the players before each scholarship period was found to serve as an employment contract, providing "detailed information concerning the duration and conditions under which the compensation will be provided to [the players]."<sup>49</sup> With regard to the control exercised by the school and its coaches, the regional director cited the daily itineraries that are provided to the players "which set forth, hour by hour, what football related activities the players are to engage in from as early as 5:45 a.m. until 10:30 p.m., when they are expected to be in bed."<sup>50</sup> As for payment, the regional director stated simply: "[I]t is clear that the scholarships that players receive are in exchange for the athletic services being performed."<sup>51</sup>

The regional director declined to view the Northwestern players as similar to the graduate assistants in *Brown University*. The regional director explained that the players' football-related duties "are unrelated to their academic studies unlike the graduate assistants whose teaching and research duties were inextricably related to their graduate degree requirements [.]"<sup>52</sup>

On April 9, 2014, Northwestern requested a review of the regional director's decision.<sup>53</sup> Northwestern argued that the decision should be reviewed because the players' petition presents a unique and novel issue, because the regional director misapplied and departed from Board precedent, and because the regional director's findings on substantial factual issues are clearly erroneous on the record and prejudicially affect the university's rights.<sup>54</sup> On April 24, 2014, the Board agreed to review the regional director's decision.<sup>55</sup>

If CAPA becomes the players' exclusive representative, the union has indicated that it will bargain over health and safety issues, additional financial support for the players, and health insurance. CAPA has said that it will bargain with the university within the existing NCAA rules and will not bargain for terms that are prohibited by the NCAA. CAPA has also said that it will "speak for the Players as the NCAA landscape continues to evolve."<sup>56</sup>

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<sup>46</sup> See Ben Strauss, *Test in Northwestern Case: Is College Football a Job?* N.Y. Times, Feb. 23, 2014, at SP4.

<sup>47</sup> Northwestern Univ., Case 13-RC-121359, 2014 WL 1246914 (N.L.R.B.) (Mar. 26, 2014).

<sup>48</sup> *Id.* at \*12.

<sup>49</sup> *Id.* at \*13.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at \*15.

<sup>53</sup> Northwestern's Request for Review of Regional Director's Decision and Direction of Election, Northwestern Univ., Case 13-RC-121359 (N.L.R.B. Apr. 9, 2014), available at <http://dradis.ur.northwestern.edu/multimedia/pdf/nlr.pdf>.

<sup>54</sup> *Id.* at 2-3.

<sup>55</sup> See Nat'l Lab. Rel. Board, *NLRB Grants Request for Review in Northwestern University Athletes Case* (Apr. 24, 2014), available at <http://www.nlr.gov/news-outreach/news-story/nlr-grants-request-review-northwestern-university-athletes-case>.

<sup>56</sup> See Post-Hearing Brief of Petitioner College Athletes Players Association, Northwestern Univ., Case 13-RC-121359 (N.L.R.B. Mar. 17, 2014), at 1, available at <http://www.nlr.gov/case/13-RC-121359>; Petitioner's Response to Request

Northwestern believes that CAPA would bargain over pay and other economic benefits, if it is certified as the players' exclusive representative. If CAPA does attempt such negotiations, and the university declines to bargain over these mandatory subjects of bargaining, it could be subject to an unfair labor practice charge. At the same time, however, the negotiation of economic benefits could lead to possible NCAA sanctions. Northwestern has explained that it cannot offer scholarships greater than the amount allowed by the NCAA. According to the university, if it did, the NCAA could prevent it from playing football. The university also argues that, because they are subject to NCAA rules, it could not bargain over the sale by players of their images or likenesses, the types of leases allowed for players living off-campus, the types of outside employment, or random player drug testing.<sup>57</sup>

## Other Developments that May Affect Unionization Efforts by College Athletes

If the Board and federal courts determine that Northwestern University football players are employees for purposes of collective bargaining, other developments may affect unionization efforts by athletes at private colleges and universities.

Under NCAA rules, a Division I student-athlete cannot receive financial aid that exceeds the cost of attendance at an institution. A student-athlete may receive financial aid up to a full "grant-in-aid." Except for possible changes described below, a full grant-in-aid at Division I schools covers the institution's cost of tuition and fees, room and board, and the cost of required books. The cost of attendance may, however, include other costs that are not included in a full grant-in-aid (e.g., the cost of supplies, transportation, or other expenses). Thus, the cost of attendance is generally greater than a full grant-in-aid. In addition to a full grant-in-aid, a student-athlete might receive other financial assistance up to the cost of attendance.<sup>58</sup>

Pursuant to a federal district court decision issued on August 8, 2014, the NCAA Division I Football Bowl Subdivision (FBS) and Division I basketball schools can use revenue from the use of player's names, images, or likenesses to provide financial aid up to the cost of attendance.<sup>59</sup> These schools may also provide up to \$5,000 annually to current, former, and prospective players for the licensing or use of their names, images, or likenesses. The latter amounts would be paid when the players leave school or when their eligibility for athletic aid expires. The decision

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for Review of Regional Director's Decision and Direction of Election, Northwestern Univ., Case 13-RC-121359 (N.L.R.B. Apr. 16, 2014), at 25-26, *available at* <http://www.nlr.gov/case/13-RC-121359>. The National Collegiate Athletic Association (NCAA) was created in 1906 to establish uniform rules for college sports. The NCAA has also established rules for recruiting and providing financial aid to student-athletes. The organization currently has more than 1,100 member schools, both public and private. *See* Nat'l Collegiate Athletic Ass'n, *NCAA Members by Division*, *available at* <http://web1.ncaa.org/onlineDir/exec2/divisionListing>.

<sup>57</sup> Brief to the Regional Director on Behalf of Northwestern University, Northwestern Univ., Case 13-RC-121359 (N.L.R.B. Mar. 17, 2014), at 66, 83, 87, 89, *available at* <http://www.nlr.gov/case/13-RC-121359>; Northwestern's Request for Review of Regional Director's Decision and Direction of Election, *supra* note 53, at 43.

<sup>58</sup> NCAA rules provide an exception to student-athletes who receive Pell Grants. These student-athletes may receive financial aid up to the cost of attendance or an amount equal to a full grant-in-aid plus the Pell Grant, whichever is greater. *See* Nat'l Collegiate Athletic Ass'n, *Division I Manual: 2013-14* (Jan. 2014), at 192-94, *available at* <http://www.ncaapublications.com/productdownloads/D114JAN.pdf>. For a description of Pell Grants, *see* CRS Report R42446, *Federal Pell Grant Program of the Higher Education Act: How the Program Works and Recent Legislative Changes*, by Cassandra Dortch.

<sup>59</sup> *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, No. C 09-3329 CW, 2014 WL 3899815 (N.D.Cal. Aug. 8, 2014).

applies to student-athletes at both private and public colleges and universities. The NCAA has said that it will appeal the ruling.<sup>60</sup>

Also, on August 7, 2014, the NCAA Division I Board of Directors adopted a new governing structure for Division I colleges and universities. Among other changes, five conferences—consisting of 65 private and public colleges and universities—will be allowed to adopt new rules affecting student athletes. The five conferences are the Atlantic Coast Conference (ACC), Big Ten, Big 12, Pac-12, and Southeastern Conference (SEC). (Northwestern University is a member of the Big Ten Conference.) Under new authority, the conferences will be allowed to increase the maximum grant-in-aid up to the full cost of attendance. The conferences will also be allowed to provide student-athletes with multi-year scholarships, offer health insurance coverage, pay for disability insurance, cover the cost of transportation for high school students and their parents to visit campus, change the limits on the amount of time devoted to sports, increase the amount of academic support, or allow athletes to earn money from activities not related to sports. To vote for a rule change, each of the 65 schools will have one vote. In addition, 15 student-athlete representatives—three from each of the five conferences—will be able to cast votes. The first votes on rule changes could be held in January 2015.<sup>61</sup> The NCAA could reconsider the rule changes if at least 75 Division I schools request a vote to override the changes. The rule changes could be suspended if at least 125 schools request a vote on the changes. Schools must request a vote within 60 days of the date that the rule changes were adopted by the Board of Directors.<sup>62</sup>

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<sup>60</sup> See Nat'l Collegiate Athletic Ass'n, *NCAA Will Appeal O'Bannon Ruling* (Aug. 10, 2014), available at <http://www.ncaa.org/about/resources/media-center/press-releases/ncaa-will-appeal-o%E2%80%99bannon-ruling>.

<sup>61</sup> See Nat'l Collegiate Athletic Ass'n, *Division I Steering Committee on Governance: Recommended Governance Model* (July 18, 2014), at 6-7, 28-34, available at <http://www.ncaa.org/sites/default/files/DI%20Steering%20Committee%20on%20Gov%20Proposed%20Model%2007%2018%2014%204.pdf>.

<sup>62</sup> Division I Manual: 2013-14, *supra* note 58, at 32-33.

## Appendix. Division I Private Colleges and Universities: Football and Men's Basketball

College sports teams that bring in more in revenues than it costs to run the program, the “revenue sports” teams, help support “non-revenue sports,” such as golf, tennis, swimming, baseball, softball, and others. The principal revenue sports are football and men’s basketball.

Division I football is divided into two subdivisions. The Football Bowl Subdivision (FBS) has 128 teams; the Football Championship Subdivision (FCS) has 126 teams. Northwestern University is one of 17 private, four-year colleges and universities in the FBS. Another 46 private colleges and universities participate in the FCS. Both the FBS and FCS are further divided into different conferences, leagues, or associations.<sup>63</sup>

Division I men’s basketball has 346 teams. 115 schools that compete in Division I men’s basketball are private four-year colleges or universities.

The 128 FBS schools must support at least 16 varsity sports teams. The schools can award financial aid to as many as 85 football players, with each player able to receive up to a full scholarship. The 126 FCS schools must sponsor at least 14 varsity sports teams and can award up to the equivalent of 63 full football scholarships, divided among no more than 85 players. FBS schools participate in bowl games, while the FCS uses a playoff system to determine a champion.<sup>64</sup>

**Table A-1** lists the 17 FBS football schools that are private four-year schools; the 46 FCS football schools that are private; and the 115 Division I men’s basketball schools that are private.

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<sup>63</sup> Nat’l Collegiate Athletic Ass’n, *Division I*, available at <http://www.ncaa.org/d1>.

<sup>64</sup> NCAA, *Division I Manual: 2013-14*, at 206, 354.

**Table A-1. Private Colleges and Universities, Division I Football and Men's Basketball**

<b>Men's Football</b>			
	<b>Football Bowl Subdivision</b>	<b>Football Championship Subdivision</b>	<b>Men's Basketball</b>
1	Baylor University	Bethune-Cookman University	American University
2	Boston College	Brown University	Baylor University
3	Brigham Young University	Bryant University	Belmont University
4	Duke University	Bucknell University	Bethune-Cookman University
5	Northwestern University	Butler University	Boston College
6	Rice University	Campbell University	Boston University
7	Southern Methodist University	Charleston Southern University	Bradley University
8	Stanford University	Colgate University	Brigham Young University
9	Syracuse University	College of the Holy Cross	Brown University
10	Texas Christian University	Columbia University-Barnard College	Bryant University
11	Tulane University	Cornell University	Bucknell University
12	University of Miami (Florida)	Dartmouth College	Butler University
13	University of Notre Dame	Davidson College	Campbell University
14	University of Southern California	Drake University	Canisius College
15	University of Tulsa	Duquesne University	Centenary College (Louisiana)
16	Vanderbilt University	Elon University	Charleston Southern University
17	Wake Forest University	Fordham University	Colgate University
18		Furman University	College of the Holy Cross
19		Gardner-Webb University	Columbia University-Barnard
20		Georgetown University	Cornell University
21		Hampton University	Creighton University
22		Harvard University	Dartmouth College
23		Howard University	Davidson College
24		Jacksonville University	DePaul University
25		Lafayette College	Drake University
26		Lehigh University	Drexel University
27		Liberty University	Duke University
28		Marist College	Duquesne University
29		Mercer University	Elon University
30		Monmouth University	Fairfield University
31		Northwestern State University	Fairleigh Dickinson University Metropolitan Campus
32		Presbyterian College	Fordham University
33		Princeton University	Furman University
34		Robert Morris University	Gardner-Webb University
35		Sacred Heart University	George Washington University
36		Saint Francis University (Pennsylvania)	Georgetown University
37		Samford University	Gonzaga University
38		Stetson University	Hampton University
39		University of Dayton	Harvard University
40		University of Richmond	High Point University
41		University of San Diego	Hofstra University
42		Valparaiso University	Houston Baptist University

<b>Men's Football</b>		
<b>Football Bowl Subdivision</b>	<b>Football Championship Subdivision</b>	<b>Men's Basketball</b>
43	Villanova University	Howard University
44	Wagner College	Iona College
45	Wofford College	Jacksonville University
46	Yale University	La Salle University
47		Lafayette College
48		Lehigh University
49		Liberty University
50		Lipscomb University
51		Long Island University-Brooklyn
52		Loyola Marymount University
53		Loyola University Chicago
54		Loyola University Maryland
55		Manhattan College
56		Marist College
57		Marquette University
58		Mercer University
59		Monmouth University
60		Mount St. Mary's University
61		Niagara University
62		Northeastern University
63		Northwestern State University
64		Northwestern University
65		Oral Roberts University
66		Pepperdine University
67		Presbyterian College
68		Princeton University
69		Providence College
70		Quinnipiac University
71		Rice University
72		Rider University
73		Robert Morris University
74		Sacred Heart University
75		Saint Francis University
76		Saint Joseph's University
77		Saint Louis University
78		Samford University
79		Santa Clara University
80		Seattle University
81		Seton Hall University
82		Siena College
83		Southern Methodist University
84		St. Bonaventure University
85		St. Francis College Brooklyn
86		St. John's University (New York)
87		St. Mary's College of California

Men's Football		
Football Bowl Subdivision	Football Championship Subdivision	Men's Basketball
88		St. Peter's University
89		Stanford University
90		Stetson University
91		Syracuse University
92		Texas Christian University
93		Tulane University
94		University of Dayton
95		University of Denver
96		University of Detroit Mercy
97		University of Evansville
98		University of Hartford
99		University of Miami (Florida)
100		University of Notre Dame
101		University of Portland
102		University of Richmond
103		University of San Diego
104		University of San Francisco
105		University of Southern California
106		University of the Pacific
107		University of Tulsa
108		Valparaiso University
109		Vanderbilt University
110		Villanova University
111		Wagner College
112		Wake Forest University
113		Wofford College
114		Xavier University
115		Yale University

**Source:** Information on schools that are members of Division I football and men's basketball is from the *National Collegiate Athletic Association*, available at <http://www.ncaa.org>. To identify which of those schools are four-year private schools, CRS analyzed institutional data from the U.S. Department of Education, *Integrated Postsecondary Education Data System (IPEDS)*, available at <http://nces.ed.gov/ipeds/about/>.

## Author Information

Jon O. Shimabukuro  
Legislative Attorney

David H. Bradley  
Specialist in Labor Economics



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